



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/144066

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on November 28, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept to the Petitioner for an overpayment of benefits totaling \$4,815.59.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lynnae Boynga
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On March 9, 2012, the agency issued a Child Care Overpayment Notice to the Petitioner informing her that the agency was seeking to recover an overissuance of \$2,964 in child care benefits for the period of February, 2010 – July, 2011.

3. On April 3, 2012, the agency issued FoodShare overissuance notices to the Petitioner informing her that the agency was seeking to recover an overissuance of benefits in the amount of \$1,853.60. The notice informed the Petitioner that an appeal of the overissuance must be filed within 45 days of the date of the action.
4. On August 17, 2012, the agency issued a notice of tax intercept to the Petitioner informing the Petitioner that the agency seeks to intercept tax refunds and credits for the unpaid overissuances of benefits in the amount of \$4,815.59. The notice further informed the Petitioner of the right to file an appeal of the tax intercept action within 30 days of the date of the notice to the Division of Hearings and Appeals.
5. On September 26, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. In this case, the tax intercept was issued on August 17, 2012. The Petitioner had 30 days to appeal. The Petitioner filed an appeal 39 days after the date of the notice. Thus, I conclude that the appeal is not timely and I have no jurisdiction to hear the case.

Further, Wis. Stats. § 49.85(4) states that there is no right to a hearing on any issue for which the Petitioner had a prior right to a hearing. At the hearing, the Petitioner wished to dispute the amount of the overpayments. The Petitioner had a right to a hearing on the merits of the overpayments but an appeal of the amount of the overpayment had to be filed with the Division of Hearings and Appeals within 45 days of the date of the agency action. In this case, the CC overpayment action was March 9, 2012 and the FS overpayment action was April 3, 2012. This appeal is untimely with regard to the merits of the overpayment action and, because the Petitioner had a right to a hearing on the issue but failed to exercise that right, the Petitioner cannot dispute the merits of the overpayment as part of the tax intercept case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

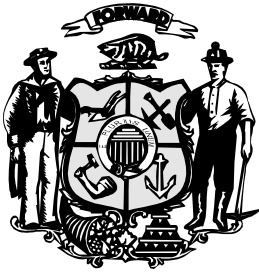
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of January, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 11, 2013.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability